

Doc Code: AP.PRE.REQ

PTO/SB/33 (01-09)

Approved for use through 02/28/2009. OMB 0651-0031

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 1254-0302PUS1	
		Application Number 10/564,391-Conf. #8971	Filed January 13, 2006
		First Named Inventor Kohei NANBU et al.	
		Art Unit 2883	Examiner J. P. Hughes
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number 29,271</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</p> <p><i>Robert D. Gorenstein #48222</i> Signature</p> <p>Charles Gorenstein Typed or printed name</p> <p>(703) 205-8000 Telephone number</p> <p>June 4, 2009 Date</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of 1 forms are submitted.</p>			

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Kohei NANBU et al.

Application No.: 10/564,391

Confirmation No.: 8971

Filed: January 13, 2006

Art Unit: 2883

For: LIQUID CRYSTAL DISPLAY DEVICE,
BACKLIGHT UNIT

Examiner: J. P. Hughes

REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

MS AF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Madam:

In addition to the Notice of Appeal which is being concurrently filed, Applicants respectfully request a Pre-Appeal Brief Conference to consider the issues raised in the Office Action dated April 7, 2009, that finally rejected claims 9-23.

REMARKS

Rejection Under 35 U.S.C. 103(a)

The Examiner has rejected claims under the provisions of 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,160,663 ("Merrill").

Office Action is silent with respect to new claim 23

In an Amendment filed December 3, 2008, Applicants had added new claim 23. Despite this new claim, the Examiner's Final Office Action dated April 7, 2009 repeats verbatim the previous rejection presented on page 3 of the Office Action dated September 4, 2008, which does not address the features recited in claim 23. Claim 23 specifically recites an arrangement of

“wherein the second optical sheet is arranged on the side opposite to light sources provided in the backlight unit with respect to the reflective polarizing sheet,” i.e., an embodiment in which the reflective polarizing sheet is closer to the light source. Merrill does not disclose such an arrangement. In particular, Fig. 1 of Merrill shows reflective polarizer film 114 as being the film farthest from the light guide 108.

Office Action makes unsupported arguments

The Examiner’s rejection is not supported by the plain teachings of the cited prior art, and instead is blatantly based on improper hindsight reasoning. Pursuant to M.P.E.P. § 2144.03, Applicants request that prior art be cited in support of the Examiner’s arguments, and/or that claims be allowed.

In particular, in the Final Office Action, the Examiner states that, “it would have been obvious to one of ordinary skill in the art at the time of the invention to compensate for thermal expansion via anisotropic thermal expansion coefficients such that distortion due to thermal expansion of the sheets will be reduced to design for the warping effect contemplated by Merrill.” The Examiner goes on to state that: “This follows from the notoriously well known knowledge that warping may be caused by thermal differences and that of different thermal expansion coefficients. Anisotropic thermal expansion coefficients will allow for uniform expansion and shrinking of the sheets in all directions, thereby compensating for warping.” (“Response to Arguments”). **Applicants request a reference(s) be provided in support of this allegation.**

Applicants submit that these statements regarding “warping” are not in fact supported by the teachings of Merrill. In particular, the Examiner’s statement that “warping may be caused by thermal differences and that of different thermal expansion coefficients” is not supported by the teachings of Merrill and comes from knowledge gleaned only from Applicants’ own disclosure, i.e., impermissible hindsight reasoning (MPEP § 2145(X)(A)).

The term “warping” that is disclosed in Merrill is not due to differences in coefficients of thermal expansion between adjacent sheets. The term “warping” is specifically defined in Merrill at column 6, ll. 18-21, as “buckling of the film in the thickness direction due to compressive

stresses in the plane of the film resulting from contact between the film edges and the internal bounding edges of the frame.” Merrill seeks to simultaneously minimize warping and reduce clearance (col. 3, ll. 57-59).

Applicants submit that one of ordinary skill in the art would understand that “warping” in the form of buckling due to compressive stresses in the plane of the film resulting from contact between the film edges and bounding edges of the frame is not caused by thermal differences and that of different thermal expansion coefficients, and certainly is not due to differences in thermal expansion coefficients between adjacent sheets as in the present invention.

In short, Merrill relates to a relationship between a film and bounding edges of the frame. The present invention relates to a relationship between adjacent sheets.

In embodiments of the present invention, a first optical sheet (i.e., reflective polarizing sheet) has different coefficients of linear expansion in two directions (specification at page 13, lines 3-4), while an adjacent sheet has thermal expansion coefficients that are approximately equal in each direction (specification at page 13, lines 13-14). The claimed invention represents a solution to “warping” that can occur due to differences between adjacent sheets.

Instead of relying on the teachings of Merrill, the Examiner alleges that the feature of “the coefficient of linear expansion of the second optical sheet in the direction corresponding to the first direction is approximated to the coefficient of linear expansion of the first optical sheet in the first direction,” is a design choice that would have been obvious at the time of the invention. (Final Office Action at page 3).

For the above reasons, Applicants submit that the rejection is in error with respect to the problem of “warping” that is the subject of the present invention, and provides no evidence of the solution provided by the claimed invention. In particular, Merrill does not disclose a problem of “warping” due to differences in coefficient of linear expansion between adjacent optical sheets. Furthermore, the Examiner admits that the claimed features are not taught by Merrill. Because the present invention discloses a problem and solution that are not addressed in Merrill,

Applicants submit that they have discovered the cause of a problem that is not addressed in Merrill (see MPEP § 2141.02(III) - "[A] patentable invention may lie in the discovery of the source of a problem even though the remedy may be obvious once the source of the problem is identified. This is part of the 'subject matter as a whole' which should always be considered in determining the obviousness of an invention under 35 U.S.C. § 103." In re Spinnoble, 405 F.2d 578, 585, 160 USPQ 237, 243 (CCPA 1969)").

For at least these reasons, Applicants submit that the rejection fails to establish *prima facie* obviousness and must be withdrawn.

In view of the above, each of the claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

Dated: June 4, 2009

Respectfully submitted,

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